

RODERICK ADAMS, JR.,

Civ. No. 08-6148-TC

OPINION AND ORDER

Defendant.

Coffin, Magistrate Judge:

Plaintiff, a former employee of defendant, filed a complaint alleging violations of 42 U.S.C. § 1981, 42 U.S.C. § 2000e-2(a) ("Title VII"), 42 U.S.C. § 2000e-3, ORS 659A.030(1)(a)-(f), ORS

1 659A.040, ORS 659A.046, intentional infliction of emotional
2 distress, and wrongful discharge. After working for defendant on
3 a temporary basis for six months, plaintiff became a regular
4 employee in September 2006. Pursuant to company policy,
5 plaintiff signed a "dispute resolution agreement" upon commencing
6 regular employment.

7 The agreement states that "[a]ll claim (sic) and disputes
8 shall be resolved through the three-step dispute resolution
9 process described in this Dispute Resolution Agreement." That
10 process includes direct personal negotiation, non-binding
11 mediation, and, if those are unsuccessful, binding arbitration.
12 The agreement further states that "all claims and disputes,"
13 whether or not they arise out of or relate to an employee's
14 employment with defendant, are covered by the agreement,
15 "[e]xcept for the claims set out in the Claims Not Covered
16 paragraph."

17 The agreement lists several types of covered claims, but
18 states that the list is not exclusive. The types of claims that
19 are explicitly listed include Title VII claims. The agreement
20 does not cover workers' compensation, unemployment, unfair
21 competition, trade secret, or pension claims where the benefit
22 plan contains its own dispute resolution procedure. The
23 agreement states that each party's promise to resolve employment
24 claims through alternative dispute resolution is consideration
25 for the other party's like promise.

26 Defendant contends that the arbitration agreement is
27 unconscionable and therefore unenforceable, that he did not
28 knowingly agree to arbitrate, and that there was inadequate

1 consideration for the arbitration agreement.

2 Standard

3 Defendant argues that dismissal is appropriate under either
4 Fed. R. Civ. P. 12(b)(1) (lack of jurisdiction over the subject
5 matter) or Fed. R. Civ. P. 12(b)(6) (failure to state a claim
6 upon which relief can be granted). "Ordinarily, where a
7 jurisdictional issue is separable from the merits of a case, the
8 court may determine jurisdiction by the standards of a Rule
9 12(b)(1) motion to dismiss for lack of jurisdiction." Roberts v.
10 Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987). The court is
11 "free to hear evidence regarding jurisdiction and to rule on that
12 issue prior to trial, resolving factual disputes where
13 necessary." Augustine v. United States, 704 F.2d 1074, 1077 (9th
14 Cir. 1983). The existence of disputed material facts "will not
15 preclude the trial court from evaluating for itself the merits of
16 jurisdictional claims." Id. (quoting Thornhill Publishing Co. v.
17 General Telephone & Electronics Corp., 594 F.2d 730, 733 (9th
18 Cir. 1979)).

19 Dismissal for failure to state a claim is appropriate where
20 it appears beyond doubt that the plaintiff can prove no set of
21 facts to support the claim that would entitle the plaintiff to
22 relief. Keniston v. Roberts, 717 F.2d 1295, 1300 (9th Cir. 1983)
23 (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). Moreover,
24 "[m]aterial allegations in a complaint must be taken as true and
25 viewed in the light most favorable to the plaintiff." Geraci v.
26 Homestreet Bank, 347 F.3d 749, 751 (9th Cir. 2003) (citing
27 Daviton v. Columbia/HCA Healthcare Org., 241 F.3d 1131, 1133 n.
28 1 (9th Cir. 2001)).

1 Defendant moves to dismiss based upon those rules and the
2 Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16, which removes
3 the court's subject matter jurisdiction to hear the claim when
4 there is a valid, enforceable arbitration clause. Therefore,
5 defendant's motion to dismiss is "one means to raise its
6 arbitration defense. In effect, [defendant's] motion is a
7 petition to this court within the meaning of § 4 of the FAA."
8 Rogue v. Applied Materials, Inc., No. CV 03-1564-ST, 2004 WL
9 1212110, at *4 (D. Or. Feb. 20, 2004).

11 Discussion

12 The FAA states that written agreements to arbitrate arising
13 out of transactions involving interstate commerce "shall be
14 valid, binding, irrevocable, and enforceable, save upon such
15 grounds as exist at law or in equity for the revocation of any
16 contract." 9 U.S.C. § 2. If the issue is referable to
17 arbitration under the agreement, then the court must direct the
18 issue to arbitration and stay the trial. 9 U.S.C. § 3. An
19 agreement to arbitrate is to be "rigorously enforce[d]." Dean
20 Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 221 (1985).

21 If the court is satisfied that the making of the arbitration
22 agreement is not at issue, then the court must order arbitration.
23 The court "can only determine whether a written arbitration
24 agreement exists, and if it does, enforce it 'in accordance with
25 its terms.'" Howard Elec. & Mech. Co. v. Frank Briscoe Co., 754
26 F.2d 847, 849 (9th Cir. 1985) (citations omitted).

27 We apply "ordinary state-law principles that govern the
28 formation of contracts" when determining the validity of an
4 Opinion and Order

1 arbitration agreement. See Rogue, 2004 WL 1212110 at *5 (citing
2 Circuit City Stores, Inc. v. Adams, 279 F.3d 889, 892 (9th Cir.
3 2002). Under Oregon law, unconscionability is "a legal issue
4 that must be assessed at the time the contract was formed." Id.
5 (citing Best v. U.S. Nat'l Bank of Or., 739 P.2d 554, 556 (Or.
6 1987)).

7 The Oregon Court of Appeals recently discussed
8 unconscionability in Vasquez-Lopez v. Beneficial Oregon, Inc.,
9 152 P.3d 940, 948 (Or. App. 2007). Unconscionability in Oregon
10 has "both a procedural and a substantive component." Id.
11 Procedural unconscionability refers to "the conditions of
12 contract formation and focuses on two factors: oppression and
13 surprise." Id. Oppression refers to inequality in bargaining
14 power, precluding meaningful negotiation and choice. Surprise
15 "involves the extent to which the supposedly agreed-upon terms of
16 the bargain are hidden in a prolix printed form drafted by the
17 party seeking to enforce the terms." Id. (quoting Acorn v.
18 Household Intern, Inc., 211 F. Supp. 2d 1160, 1168 (N. D. Cal.
19 2002)). Substantive unconscionability refers to the terms of the
20 contract rather than formation.

21 In Oregon, "substantial disparity in bargaining power,
22 combined with terms that are unreasonably favorable to the party
23 with the greater power may result" in an unconscionable
24 provision. Carey v. Lincoln Loan Co., 125 P.3d 814, 828 (Or.
25 App. 2005), aff'd, 157 P.3d 775 (Or. 2007). Such a scenario may
26 involve deception or lack of genuine consent. Id. Both
27 procedural and substantive unconscionability are relevant in
28 Oregon, but only substantive unconscionability is "absolutely

1 necessary." Vasquez-Lopez, 152 P.3d at 948. However, each case
2 is decided on its own facts. Id.

3 Plaintiff contends that he did not understand the agreement,
4 that he was not given an opportunity to take it home and read it
5 before signing, and that he was not informed that he could ask
6 questions about it. However, plaintiff's vague arguments do not
7 render the arbitration agreement unconscionable. Substantive
8 unconscionability, the only necessary element under Oregon law,
9 requires unreasonable terms. The agreement at issue here is a
10 standard arbitration agreement in the employment context; it does
11 not limit or preclude attorney fees or prevent plaintiff from
12 filing a discrimination charge with an administrative agency.
13 There is nothing substantively unconscionable about the
14 agreement.

15 Furthermore, plaintiff's claim that there was inadequate
16 consideration for the agreement is without merit. Plaintiff was
17 an at-will employee whose continued employment provided
18 sufficient consideration for the arbitration agreement. See
19 Fontaine v. Rent-a-Center West, Inc., No. CV 05-1485-KI, 2006 WL
20 141606, at *3 (D. Or. Jan. 13, 2006).

21
22 Conclusion

23 For the foregoing reasons, defendant's motion to stay
24 and to compel arbitration is granted.

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26 Dated this 13 day of August, 2008.

THOMAS M. COFFIN
United States Magistrate Judge

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